

HUMAN RIGHTS AND RULE OF LAW IN CHINA: WHERE ARE WE NOW AND WHERE DO WE GO FROM HERE?

ROUNDTABLE BEFORE THE CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA ONE HUNDRED TENTH CONGRESS SECOND SESSION

DECEMBER 12, 2008

Printed for the use of the Congressional-Executive Commission on China



Available via the World Wide Web: <http://www.cecc.gov>

U.S. GOVERNMENT PRINTING OFFICE

46-034 PDF

WASHINGTON : 2009

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
Fax: (202) 512-2104 Mail: Stop IDCC, Washington, DC 20402-0001

CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

LEGISLATIVE BRANCH COMMISSIONERS

House

SANDER LEVIN, Michigan, *Chairman*
MARCY KAPTUR, Ohio
TOM UDALL, New Mexico
MICHAEL M. HONDA, California
TIMOTHY J. WALZ, Minnesota
CHRISTOPHER H. SMITH, New Jersey
EDWARD R. ROYCE, California
DONALD A. MANZULLO, Illinois
JOSEPH R. PITTS, Pennsylvania

Senate

BYRON DORGAN, North Dakota, *Co-Chairman*
MAX BAUCUS, Montana
CARL LEVIN, Michigan
DIANNE FEINSTEIN, California
SHERROD BROWN, Ohio
CHUCK HAGEL, Nebraska
SAM BROWNBACK, Kansas
GORDON H. SMITH, Oregon
MEL MARTINEZ, Florida

EXECUTIVE BRANCH COMMISSIONERS

PAULA DOBRIANSKY, Department of State
CHRISTOPHER R. HILL, Department of State
HOWARD M. RADZELY, Department of Labor
CHRISTOPHER PADILLA, Department of Commerce
DAVID KRAMER, Department of State

DOUGLAS GROB, *Staff Director*
CHARLOTTE OLDHAM-MOORE, *Deputy Staff Director*

CONTENTS

	Page
Opening statement of Douglas Grob, Staff Director, Congressional-Executive Commission on China	1
Edwards, R. Randle, Walter Gellhorn Professor Emeritus, Columbia Univer- sity School of Law	2
Craner, Lorne, President, International Republican Institute	5
Schriver, Randall, Partner, Armitage International and President/CEO, the Project 2049 Institute	8
Richardson, Sophie, Asia Advocacy Director, Human Rights Watch	12
Chang, Phyllis, Executive Director, China Law and Development Consultants, Ltd.	16

HUMAN RIGHTS AND RULE OF LAW IN CHINA: WHERE ARE WE NOW AND WHERE DO WE GO FROM HERE?

FRIDAY, DECEMBER 12, 2008

CONGRESSIONAL-EXECUTIVE
COMMISSION ON CHINA,
Washington, DC.

The roundtable was convened, pursuant to notice, at 10:31 a.m., in room SD-628, Dirksen Senate Office Building, Charlotte Oldham-Moore, (Deputy Staff Director) presiding.

Present: Douglas Grob, Staff Director.

OPENING STATEMENT OF DOUGLAS GROB, STAFF DIRECTOR, CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

Mr. GROB. Well, thank you all for joining us today. We are very pleased to have this distinguished panel of experts, and I will not speak for but half a minute so that we can hear what they have to say.

But I would just like to ask the panelists, where possible, to address a few issues that I think will be helpful as members of our audience take what they learn here today and try to transform it into an understanding of human rights and rule of law issues in China going forward.

We have in the last year seen an increased need to pay attention to the metrics that we use to assess progress in the development of rule of law and human rights in China. We are seeing that China has become better than ever before at producing legislation, producing it fast in some instances, particularly at local levels. Much of the new legislation at first glance looks quite good on paper. And improvement of this sort in legislative processes used to be a sign of progress. We have to be careful now, however, not to be too impressed by legislation that looks good on paper, but that is divorced from transparent, consistent, and effective implementation. The risk is that distinction between the promulgation of law and legally binding regulations on the one hand, and the making of propaganda on the other becomes blurred.

Looking at the span of 30 years that brings us from the normalization of relations here today, we would like our panelists to discuss whether we face the hazard of contributing to the blurring of lines if we are too easily impressed by legislative efforts without at the same time asking probing questions about implementation and allowing enough time to monitor implementation before attempting to assess progress.

Second, we have noticed in the last year that the conflict of laws in China remains an area of ever-increasing concern. We reported last year, and continue to see this year, Chinese authorities' strategic use of conflict between laws; that is, where you have two laws that are both well written and well drafted, but once you put them next to each other, you find that key provisions in one may be neutralized by provisions in the other. We hope our panelists then would also comment on whether they see a need for us to raise our level of awareness and understanding of problems such as this before drawing conclusions about progress in rule of law and human rights.

I would also ask that our panelists comment on the terminology we choose to use to describe human rights and rule of law issues in China. The Chinese Government and Communist Party describe citizen activism and public protest using the terms "social instability" and "social unrest." They favor these terms, it seems, in part because these terms implicitly point to citizens as the root cause of undesirable social conditions. However, China's increasingly active and engaged citizenry may be one of China's most important resources for addressing the public policy problems that China faces today, whether it be food safety, forced labor, environmental degradation, or corruption.

In our reporting, we deliberately avoid using the terms "social instability" and "social unrest," and refer instead to "citizen activism" and "public protest." It is a subtle but important practice because it is consistent with the notion that engaging citizens and not repressing them will further the effective implementation of human rights and the rule of law. Therefore, if our panelists would please comment on the importance that they have noticed over the years in the discourse that we choose—the language that we use—to discuss and talk about human rights and the rule of law in China, and the impact those choices may have had, that would be quite helpful.

And now I have the privilege of turning the floor over to Professor Randy Edwards from Columbia University.

**STATEMENT OF R. RANDLE EDWARDS, WALTER GELLHORN
PROFESSOR EMERITUS, COLUMBIA UNIVERSITY SCHOOL OF
LAW**

Mr. EDWARDS. Thank you very much. It is an honor to be here. I was a member of the D.C. Bar, so as a lawyer, I guess I should be careful to warn you that professors very rarely can speak for less than 50 minutes, so I am not sure how wise they were to start with me. But they did put me just opposite the clock, so I will try to limit my remarks.

I do not know how many of you remember the so-called Maoist period of the Cultural Revolution, the late 1960s and the early 1970s, when an important form of controlling the masses and encouraging them to think in the right way was self-criticism. And I remember when I wanted to go to China, I had been teaching Chinese law at Columbia Law School from 1973, pretending to be an expert. I did not worry too much about my colleagues finding out because none of them could speak Chinese. They did not know what was going on. And so Chinese law was pretty much then

whatever I said it was, at least at Columbia, and I could make it up as I went along. And I tried to base my observations on trends and developments on Chairman Mao's latest poem. And, of course, a great deal of latitude was permitted reading that.

It was probably in the late 1970s or early 1980s when I realized that the taxi drivers were, on the one hand, the best source of information and insight on the reality of Chinese law. On the other hand, the taxi drivers were not aware that there was an enormous corpus of what lawyers would admit was law—that's administrative law, which was largely internal. And we Americans were not looking for that law. We were looking for laws and legal process and due process and rights that resembled our own reality as well as our definition. And so the taxi driver did not know that there was a great deal of regularity, at least in the way administrative power was exercised, for the purposes of the state and for the leader. Of course, this has a long historical background, this system of administrative regulations, wall-to-wall rules, and strict discipline of officials who failed to comply and carry out the Emperor's will, and later the party's will. This was all "*neibu*," internal rules and regulations.

And so I guess one point that I would make here and urge you to think about this morning and in the future when you think about what China is, in particular about so-called rule of law, is China does have a very deep tradition in the state bureaucracy of rules and regulations. It is very hard to change that. There have obviously been some changes. Membership in the World Trade Organization, compliance, this has forced obviously a lot of paper change and perhaps some genuine changes.

Another perspective on law, of course, is from the bottom up, from the people's view. And since there has never been a participatory democracy in China that has selected the power institutions, likewise there has not been a great deal of popular participation from the bottom up in the definition of norms and procedures for ruling themselves.

On the other hand, one point that I deeply believe in, which I urge you to at least tentatively consider as you weigh it against this wonderful presentation by the CECC panel today of the reality and what is happening and what is not happening in China, is that I believe that the "*xin*-(?)," the masses of the Chinese people today and for a thousand years had a sense of entitlement. We would not call it a sense of due process of law and of rights, but they have had a sense of what they owned in property. They have a sense of what is fair treatment with respect to other citizens and with respect to the state. And they were willing 300 years ago to walk 5,000 miles all the way to Beijing, pick up a stick and beat on a brass drum called the "*deng wun goo*(?)"—this is the grievance drum—to wake up the Emperor at 3 o'clock in the morning. The Emperor then would order a *de novo* trial down in the countryside, would send census down.

So there has been a popular expectation of fairness and protection, and there have been certain rules and institutions that the Emperors and the officials have had to adhere to. Just like rules today, here and there the enforcement of rules is a different matter than the articulation of rules that embody what we think are the

fundamental principles of human rights. And China has a long way to go.

I am going to ignore almost entirely my outline here because my time is just about up. I had an outline of a presentation that was going to sound almost as if it was drafted by the state public security bureau. I was going to say how wonderful things are and how much they have improved and changed, and I think there has been improvement in China.

When I first arrived in China in May 1978, there were two law schools open. I visited Peking University Law School, and I was met by the entire faculty. Four professors is all they had at that time, and I had the privilege of having a close relationship with these gentlemen, and we were able to start an exchange program between Columbia Law School and "Beida." Then with Ford Foundation assistance, we were able to establish a national program for helping China train lawyers and, in particular, law professors. And that, I think, is something that—not perfect, but it has had perhaps a very positive effect.

I am not sure it is positive, the fact that the number of law schools has gone from 2 to 500, because what about standards? And that is a question. But lawyers, as has already been said by the panel, lawyers now, some of them, have the guts to fight for justice. That is positive.

Another point, which I will conclude on, is every country has a problem of inconsistency between their high ideals and what they actually do. And Abu Ghraib, Guantanamo, I do not have to go into details. We have our problems. And this is not to say that the Chinese should not be criticized and we should not help the Chinese citizens to work toward perfection, never expecting to get there. But if we want to continue to have some inputs by the Chinese Government, we have to try to avoid hypocrisy, try to avoid inconsistency, and perhaps approach the Chinese Government—and perhaps that is what we are doing—as a friend in a way, not just because they own us—they own 25 percent of our national debt—but because they deserve respect as a great country.

So I just encourage continued emphasis on open cultural exchange and education, and I am delighted that Phyllis Chang is here because she combines two very important things pertinent to the topic of the panel this morning. She represented the Ford Foundation in facilitating legal education in China, and now she is involved in running an NGO in China that is directly engaged in promoting development toward the rule of law and protection of human rights.

Thank you.

Mr. GROB. Thank you very much, Professor Edwards. I was so starstruck by this distinguished panel that in my rush to hear what they had to say, I neglected to properly introduce everybody, so I apologize. We will do that now.

Professor Randle Edwards is the Walter Gellhorn Professor Emeritus of Law at Columbia University School of Law and, as you have probably been able to tell, is a pioneer in U.S.-China legal and educational exchange. In addition, he is probably the foremost scholar in the Western world on administrative law in the Qing dynasty in China. More importantly, for our purposes here today, he

literally wrote the book on human rights in China, and we are just thrilled that you could join us today. Thank you very much.

Ms. OLDHAM-MOORE. A lot of Professor Edwards' students are in the audience today from Columbia Law School, so it is really a lovely thing to have them here.

We are very pleased to have Lorne Craner with us. He is the President of the International Republican Institute [IRI]. His most recent stint at IRI began in 2004. Prior to that, he was Assistant Secretary for Democracy, Human Rights, and Labor for President Bush, where he led President Bush's approach to democratization in the Middle East, as well as helped to establish the Millennium Account. He also served as Brent Scowcroft's National Security Council advisor on Asia. We are very fortunate to have you here, Mr. Craner.

Mr. GROB. We are very pleased to have to my right Randall Schriver, Partner with Armitage International, and also President and CEO of the Project 2049 Institute. From 2003 to 2005, Randy was Deputy Assistant Secretary of State covering China. So we are very pleased to have you with us today. Thank you very much.

Ms. OLDHAM-MOORE. We are also fortunate to have on the panel today Sophie Richardson. Ms. Richardson is the Asia Advocacy Director for Human Rights Watch and director of their work on China. Sophie has a Ph.D. in political science and a forthcoming book from Columbia University Press on China's foreign policy. She has done field work in Yunnan and other provinces.

Mr. GROB. And, finally, we are also very pleased to have with us Phyllis Chang, Executive Director of China Law and Development Consultants, Ltd. Formerly, Phyllis was the representative of the Ford Foundation in Beijing, and I would say that there is probably no person who has done work in China on human rights and rule of law issues in the last decade that has not crossed paths with Phyllis at some point. Her knowledge of conditions on the ground and of programming and policy in this area is really unsurpassed. So thank you very much for joining us today.

Ms. OLDHAM-MOORE. Okay. Mr. Craner, please.

STATEMENT OF LORNE CRANER, PRESIDENT, INTERNATIONAL REPUBLICAN INSTITUTE

Mr. CRANER. Well, first of all, thanks for the invitation to be here today. As a former member of the CECC, I have a great regard for the Commission and its work, especially for the very talented staff. Thank you.

As I look back on the last few years, especially on human rights in China, the situation certainly looks very bleak. At the State Department I was able to work on China quite a bit. There have been some who have said my successors are not. I have pointed out to them that they came into a much tougher environment than I did on human rights in China. I think things really started to change in about 2003, 2004, for the rougher. And you can see that in the arrests that have occurred this week. You can see that in the paucity of prisoner releases that have occurred, and the very little that has come out, I think, of dialogues that we have had, formal or otherwise, with China.

I do, however, believe there is reason for hope, and let me outline why.

We are all very familiar with, and I certainly do not need to tell this room about, the background of the last 25 to 30 years, the unprecedented economic growth resulting from policy changes in the 1980s. We also all know that those economic policy changes begat political changes. We are all familiar with them: village elections, judicial reform, more legislative and media openness, and the growth of a nongovernmental organization [NGO] sector.

So as the Professor said, there have been changes, but the structure in China remains incapable of dealing with a problem, and that is that these changes have begat expectations. They have caused rising expectations among the Chinese people, and no longer just among the intelligentsia. There probably will not be what we would refer to as democracy in China, but certainly—and I will borrow here a word from reformers in the Middle East—what I would call “justice.” And you think of people in the rural and urban areas, and that is essentially what they would like to see.

So you have these high expectations that are not being met, and you certainly have, as I said, in rural and urban areas people demanding more and more rights that they have been told they should be able to expect.

Randy and I and others came into the administration in 2001 dealing with a particular kind of human rights policy toward China that I think had been ongoing since the 1970s, through Democrat and Republican administrations. And that was essentially that the measurement of improvement in human rights in China was the release of dissidents. It was how many people got off the airplane in Detroit every year. And if enough dissidents were released, then apparently the human rights situation in China was changing.

I came at this, again, from more of a democracy than a human rights background, though I will tell you my most gratifying moments in government were being able to welcome people who had been released from China. And over the years, there were quite a number—Zhu Yun Lee, Rebiya Kadeer, many Tibetans. We all know who they were. And I always say that those of us who are in the Human Rights Bureau were kind of pleased with ourselves until working with John Kamm, which I had done before, we began to learn that at the rate people were getting out of prison in China, it would only take six centuries to empty out the prisons, assuming nobody else ever got arrested.

One of the things we were looking at was something that is really a bipartisan policy, and it had been looked at at the end of the Clinton Administration. Paul Gewirtz and others had begun to look at the possibilities of supporting structural change inside of China, and we were able to make those hopes come about. We had a congressional authorization, an earmark that continues today, originally for a few million, now between \$15 and \$20 million a year, to support those processes that I had talked about before—village elections, media openness, rule of law, labor groups, Tibetans, and others.

Now, I will tell you that we have all learned that you cannot implant democracy around the world. And those of us who read Jonathan Spence’s book, know the wrong thinking if you are under any

illusions that you can change China. There has been a long history of people from the West who have tried to do so. In the end, the Chinese people will change China. But what we are seeing, I think, is that clearly the Chinese people want change.

Now, to tie all this together, the current situation in China, the Chinese people are looking at a future. They have had Hong Kong come back. They have had a man in space. They have even had the Olympics. And I know a lot of them are saying, "Now what?" And I think if you look at some of the stories just from yesterday's New York Times, many of us may not look at the Business Section, but there is an interesting article on China's economic outlook, and one of the paragraphs says this: "Even at a time of increasingly dour economic news, the Chinese trade numbers"—and it said the Chinese exports had fallen 2.2 percent in one month year-to-year—"stunned many economists. They struck an ominous note for China where labor unrest has increased markedly as the economy has slowed in the last month."

You also had a story of their marking Human Rights Day by arresting dissidents who had turned up to protest at the Foreign Ministry.

I think in the present economic climate things are going to get very tough in the short run for dissidents in China. I think that is because the government there is much more brittle than we realize, but they understand that. So I think that they will clamp down.

There was an article in the L.A. Times today where Susan Shirk was saying, "I think they can get through this. They can do what they did in Tiananmen and throw some people in jail and just hold together." But I would argue that because of these increased expectations, you are not just talking about intelligentsia in China; you are not talking about college students anymore who expect something better. And in the medium run, I think increased economic and political expectations will necessitate reform by the Chinese Government.

We all know that the party as presently configured is unable to deliver on these widespread demands for justice. You can come to Beijing and you can bang the drum, and if the leaders hear of a particular case, they can solve a particular case. But there are only so many letters that they can read in one day and only so many cases that they can solve in one day. And they are simply not capable of meeting these rising demands for justice, and I think this is where this terminology about social instability comes from. It is an unstable system if you cannot address demands for justice. Inherently it is unstable.

I would argue that the United States could rely solely on traditional methods to help reform diplomacy. Congressional and United Nations resolutions, all of that should continue as, by the way, should our focus on bringing individuals out of jail. All the reform that we talk about is carried out by individuals. If you are an individual—and I have seen this around the world—and you think you could go to prison and be locked up for 20 or 30 years because you are arguing for reform in your country, it is a very daunting task to take on if you think, "I may go to prison, but maybe I will only be in for a year, and somebody will be taking care of my family in

the meantime.” It makes you a lot more willing to do what needs to be done.

And, again, I would also remind everybody here we need to keep in mind that we are not really capable of changing China. But I would argue that the United States has begun to act at the margins with the Chinese people who will change China. The programming that is going on at the State Department enables us to reach past what traditional methods on these issues do. If you are doing diplomacy, if you are doing resolutions at the Congress or the United Nations, the top tier, the government officials in China, may hear about that. Ordinary people do not. If you are able to work with ordinary people, they understand that there is some interest in the outside in the kind of work they are doing.

Finally, I would argue that such work ensures that China’s change will not be a crash landing. I do not think any of us want to see a crash landing in China with huge economic and social dislocation, as has occurred in some countries. But what it does is ensure that as change, as reform comes to China, the people there will understand the rudiments of democracy; that they will understand voting and elections; that they will understand when you vote for somebody, you are supposed to get something in return; that they will understand how civil society is supposed to be able to influence a government; that they will see a rule of law as an alternative to party rule; and they will see a media as a watchdog. At the moment all these developments are being tolerated if retarded, but at some point they will begin to come to the fore.

So let me just conclude as we look forward and think about what to do to think about the congressional earmark, the money that has been given, and the efforts the State Department has been able to make as a result as one method to be able to help reform in China.

Thank you.

Ms. OLDHAM-MOORE. Thank you, Lorne. That was really very helpful.

Randy Schriver, please begin.

STATEMENT OF RANDALL SCHRIVER, PARTNER, ARMITAGE INTERNATIONAL AND PRESIDENT/CEO, PROJECT 2049 INSTITUTE

Mr. SCHRIVER. Well, thank you very much. I also want to thank you for the invitation. You have certainly enhanced my reputation by seating me here with such a distinguished panel. I hope I am not hurting any of yours. And I also want to congratulate the Commission on almost a decade of outstanding work. Your work has always been very helpful to inform policymakers, as I found myself, but I find even now as a private business person—I am a consultant, so I am in the profession of separating people from their wallets—I oftentimes hand your reports to CEOs and other business people who are trying to understand the environment in which they are operating themselves. So the work you are doing is reaching a very broad audience, and I think it is incredibly valuable.

I was asked also to speak a little bit about the experiences of the Bush Administration as well as looking forward to the incoming Obama Administration, speak a little bit about what I think worked well, maybe did not work so well, and some advice for our

successors. And I think I want to get into a little bit of the inside baseball, because I think we often conceive—when we think about the challenge, how does government promote the right kinds of change and try to promote improvements in human rights in China, we mostly think about the substance. What is it that we are trying to achieve? What is it that we are asking? And we think less about how we are organized to do it, what are the tactics that we use, how do we interact with our Chinese interlocutors and so forth.

So I want to take a moment to first talk about organization and tactics and then talk about substance as well, and I should also as a prefacing remark say that I would associate myself with everything my colleagues have already said on this panel, particularly Lorne Craner, who I enjoyed so much working with in government and have such a great deal of respect for.

Let me talk a little bit about organization and tactics. I think the first point I want to make is that you have to organize within the lead agency for these issues in such a way that these issues are going to receive sufficient attention, have the right kind of profile, and have the right kind of prioritization. And that can be accomplished a number of ways. I think probably the easiest is when you have leadership at the Cabinet level and even beyond that prioritizes these issues. But I think there is a structural issue as well, and I personally believe that the experts, people who understand democracy promotion, human rights, need to be in charge of this policy rather than the regionalists. And, of course, you need to work hand in glove, but our colleagues who deal with this for a profession and understand all the intricacies and delicacies and effective tactics need to really be in the driver's seat. And I felt as though—perhaps a sense self-serving, I felt as though that Lorne and I had that relationship. There are others, Susan O'Sullivan, and I saw Kelly Curry back there, whether it was human rights in general or Tibet, I felt as though our Asia Bureau tried to do everything we could to facilitate our counterparts' abilities to move that agenda forward.

But that has not always been the case, and oftentimes there is a tension between regionalists who see human rights as an issue they need to manage, or sometimes even a bureaucracy to manage, and counterparts that they need to handle rather than work hand in glove. And I would urge the next administration to make the issues a priority, but also think about the structural factors that would ensure that and promote that kind of outcome.

I think another organizational question is the role of the inter-agency. I think oftentimes the U.S. State Department and our Embassy and our representatives in-country are primarily responsible, yes, but almost exclusively empowered to deal with these issues. I think this should be interagency-wide. And I look at a forum like the Strategic Economic Dialogue [SED] where we send 7 Cabinet Secretaries to China and we receive almost 20 Ministers from China when we hold the SED here in Washington, and I think this is a flagship dialogue. I know our Chinese counterparts look at it as the most important dialogue. Human rights should be injected into that in a very creative and sophisticated way.

Just, by the way, as our Chinese counterparts are very skilled at doing, if there is—I have my own list of things I admire about their bureaucracy, and one thing they are quite good at is consistency of message across ministries and a real studiousness about sticking with important agenda items. But I think this could happen in our interagency. I do not think it was very effective or even tried in our administration, and I would encourage the next administration to look at that.

I think also—I suppose this would be a popular statement with this crowd, but I think congressional and executive cooperation is also important. I think this worked well in some cases during our tenure. I think the case of Rebiya Kadeer is a good example. There was a congressional angle, of course, to her original imprisonment. So each branch had made that a priority, and I think we worked very effectively, kept one another informed. We understood what was being conveyed from Congressional staff and Members. We shared what we were doing, and I think that is a good case study. I am not so sure that it is always employed across the board in the broader human rights agenda that we are trying to pursue, and I think it could be more effective.

Let me talk a little bit about tactics and approach, and I think number one, we need to do a better job of understanding Chinese tactics and their approach to these issues. Clearly we are often engaged in trying to promote outcomes that not so much the Chinese people but the Chinese authorities and governing officials are not that enthusiastic about, or let's just say their enthusiasm is well contained. So oftentimes they engage in what I would call very clever tactics. They often trade process for policy. We fall into the trap of claiming we have made great progress because a dialogue has been resumed or a dialogue has been elevated to a new level. But, in fact, we are still just talking about process, right? We are not talking about fundamental change or reform. And so whether you want to call that slow rolling, whether you want to understand they are trying to deal in a currency where they think they can get credit rather than doing the difficult work of reform, we need to understand their approach to these issues and take into account as we formulate our own tactics.

Based on understanding Chinese tactics, we also need to understand their prioritizations, the kinds of things that they value. One of the things I have always been frustrated about and I would put our own administration on report for is this: We do not always understand where our leverage lies, where our leverage is. China is changing, but they still place a very high priority on symbolism, on so-called face, the kind of respect that their leaders and visitors receive. I have always been stunned that we oftentimes sacrifice our highest cards, our highest chits at the very beginning of a trip planning session. You know, the 21-gun salute on the White House lawn, whether or not our leader will go to Tiananmen for the opening ceremony, you know, those are the things that we should reserve as the most valuable chits, and we should employ those for things that we care about. It is sort of a value-based reciprocity where I think they do probably place a higher priority on the protocol aspects and the symbolism.

I have been involved in enough negotiations where we talked about the number of cars in a motorcade to understand where some of this is important. And it should be traded upon. We should deal in currencies that give us the opportunity for the best kind of outcomes. And I do not think we always understand our leverage. At times we do, but not always.

Another tactic I think—and I would give our administration and Lorne credit here—we need to continue is the work of working with international partners. The voice of the United States is a very powerful and important voice. Oftentimes, we are the only ones willing to speak. But for some of the reasons that were stated earlier, the perceptions of hypocrisy or maybe the suspicions of our motives because of the view that there may be burgeoning strategic competition, it is extremely helpful when you have the European Union, when you have other Asian countries—and sometimes that is the hardest nut to crack, getting countries in the region to speak up on these matters. But I think Lorne and his team certainly deserve credit for trying to do that, and that should continue.

We do need to be consistent in our message and the kinds of things we are trying to achieve, even in the face of difficult obstacles.

And, finally, I did want to address this question of respect. I could not agree more. You need to approach these issues from a position of respecting the Chinese people, respecting many of the accomplishments that China has achieved. But this should not be confused with an unwillingness to raise difficult issues, an unwillingness to be both public and private. You know, we are often told by Chinese counterparts, “Well, yes, we can talk about this, but this must be very private. If you bring this public and it becomes an embarrassing situation, it will hurt our chances for progress.”

I am of the view that you can be respectful, you can associate yourself with the right kind of reforms and the right kind of aspirations for modernization, and make these issues a priority both publicly and privately. So those are a few items on organization and tactics. I think the substance part of this has been well covered, so I will just underscore a couple points.

I certainly agree with Lorne that systemic reform rather than the individual prisoner releases should be the central focus of the next administration, as it was under Lorne’s tenure. I think even things you do not get across the finish line, working in that direction, does carry the potential for the greatest dividends. Lorne did a lot of work and his team did a lot of work on Chinese legal reform when they did away with counterrevolutionary crimes, and we did some work on looking at who was in prison for crimes that were no longer on the books and what could be done to release them. And I think that was the absolute right approach. But he is right, you cannot ignore the individual cases, nor would I in any way understate how significant that is for the relationship and how personally significant. I agree that some of my best days in Government service, welcoming Rebiya Kadeer, Ngawang Sangdrol, a Tibetan nun, I mean those things you just never forget. So that has to continue.

I think we need to be very comprehensive. I mentioned as a tactic interagency work. But we need to have a comprehensive view

of human rights promotion and realize that in a comprehensive agenda. So things like rule of law need to be included, but also environmental matters, press matters where there are opportunities.

As I said, we need to understand Chinese tactics. We need to understand Chinese objectives. There are instances where they have genuine aspirations for reform, but in some cases, they do not have the experience, the knowledge, the capacity. Trying to find those areas and exploit them is, I think, an opportunity that should not be missed.

And then, finally, I would just endorse the comment about programs. There should be no issue that is too small, programs that get into local communities, local-level reforms. You know, if you look at the pace of Chinese modernization and improvement in human rights, it is certainly not this national trend line that moves in one direction or the other. It is very uneven. And there are creative people in China that are trying to do interesting and creative things, and we need to be very active in seeking out those people and embracing their agendas in ways that we can actually help them.

So thanks again for the opportunity to participate in this panel.

Ms. OLDHAM-MOORE. Thank you, Randy Schriver.

Sophie Richardson, please.

**STATEMENT OF SOPHIE RICHARDSON, ASIA ADVOCACY
DIRECTOR, HUMAN RIGHTS WATCH**

Ms. RICHARDSON. Thanks. I am a little uncertain what to do since I think Randy and Lorne have said almost everything that I was going to say, so hopefully this will not be dull or repetitive.

First of all, thanks very much to the CECC. I will get fired for saying this out loud, but if you are going to read one thing about China in the next couple months, do not read our stuff. Go read the CECC's annual report. [Laughter.]

Don't report that part. It is a great document. It was well worth the wait, and there are some really smart, thoughtful, practical recommendations in there.

I was asked to speak this morning more about steps that the Obama Administration can take to better promote rights in China. It is logical to start, though, by reflecting on the Bush Administration's approach. On some issues like prisoner releases, on religious freedom, on pushing the Chinese to talk directly to the Dalai Lama, the Bush Administration was a pretty good ally; but on many issues, and in many instances, and particularly during the second administration, rights issues were subordinated particularly to concerns about the war on terror, trade issues, the Six Party Talks. It is also important to remember in discussions like this how much the U.S. relationship with China continues to be governed by issues related to Taiwan, which, of course, are quite separate from human rights concerns, but it matters in terms of the priorities that people in the administration are dealing with on a daily basis.

Particularly with respect to the Olympics, certainly the President had a lot more to say than most of his colleagues from other governments. But the fact of the matter is that his comments were still sorely lacking. They were late. They were not connected to any meaningful consequences for failing to improve. And worst of all,

they were virtually inaudible to a Chinese audience. Virtually none of the Chinese people to whom I have spoken since August—all of whom were in positions that allow them access to this kind of news—were aware of them.

At the same time, I think the reality is that the dynamics that drove some of the Bush Administration's decisions are not materially different from the ones that have mattered in past administrations. There are certain constraints that I think nobody does a great job of surmounting. If the Obama Administration fails, it won't be because Democrats or Republicans are better or worse on China and human rights. It is that pressing the Chinese Government on human rights is incredibly tough, but with some creativity, commitment, and coordination, the Obama team may do better than some of its predecessors.

I think that despite the incredible predictability with which the Chinese Government will reject, resist, and object to bilateral or international criticism, I think we know that sustained public criticism works. To this end, I would point to two recent developments. One, the extension of some of the temporary regulations for foreign journalists inside China. I do not think that would have happened if every embassy in Beijing and every government across Europe and in the United States had not weighed in. I think also the small improvements that we have seen in Hu Jia, a very prominent dissident, in his condition, that he has been moved to a prison closer to Beijing, would not have happened, again, without sustained international criticism.

To put it another way, the Chinese Government depends on the United States and others buying into the idea that quiet diplomacy is the only tool available. I would encourage people to question that.

We need to get better fast at finding ways of speaking directly to the Chinese people instead of speaking through the government or allowing the government to be the sole interlocutor. I point to the comment I made a minute ago about who in China hears what. We have means at our disposal. I cannot stress strongly enough how important international broadcasters like Voice of America and Radio Free Asia are to doing this. But the technology makes things possible that were not several years ago. There is no reason that senior U.S. officials cannot do things like engage in live Web chats with the Chinese people. We have seen more people make an effort to make public speeches when they are visiting Beijing or other cities. Every U.S. official should be making more of an effort to do that.

We should dramatically increase the funding available for Chinese human rights organizations. They are extraordinary people. They do great work. They need assistance. And it is not necessarily always the kind of capacity-building experience that maybe we are used to in some other parts of the world, but they need the funding and they need a little bit of political cover. Distributing rights-friendly material in Chinese is also helpful.

Much will depend for the Obama Administration on doing a better job than all of its predecessors, not just the Bush Administration but certainly also the Clinton Administration, in better coordinating policies, actions, and messages across the government. I

think a failure to do so makes it incredibly easy for the Chinese Government to exploit inconsistencies or, worse still, the silences.

I think there is no better example of this than the consequences of the disproportionate emphasis that the Bush Administration put on the Six Party Talks, which are obviously of tremendous significance. But the reality is that a lot of human rights issues were almost completely subordinated to this one particular agenda. We have great admiration for Chris Hill, and I thought the photograph in the New York Times this morning was a little bit heart-breaking—it was a snapshot of him leaving Beijing, alongside a story saying that the talks had really fallen apart. It isn't just that those talks haven't succeeded—it's also about all of the other issues that did not get raised in the hopes that the Chinese would be more cooperative on that issue.

To give a slightly more positive example of having people from across different parts of the government speak up about rights: until the financial crisis, I probably could not have picked Henry Paulson out of a line-up except for the fact that completely out of the blue, about a year ago on a visit to Beijing, he all of a sudden started talking about human rights issues. The Chinese did not see it coming, and, as a result, his comments really registered. I think it is incredibly important that particularly people at the Cabinet level go to Beijing equipped with some knowledge relevant to their own portfolios so that if they are given the opportunity or they find themselves in the circumstances where they can make these kinds of points, they should do so. There is no reason the head of the Department of Health and Human Services could not speak up about discrimination of people who have hepatitis B or forced evictions. The Secretary of Education could easily be talking about things like work-study programs in Chinese schools where children are effectively being forced into income-generating activities so that their schools stay open. I think taking that message across different parts of the government can be an incredibly effective way to promote rights.

It is profoundly frustrating to see U.S. Government officials talk at cross purposes and effectively undermine each other. Our views of President Bush's criticisms around the time of the Olympics are pretty clear. It is all that much worse when you realize that two days after he made those comments, Secretary of Labor Chao showed up in Beijing and gave a speech which basically dignified the Chinese Government's idea of "harmonious society," which we all know is a term that is often used to crush dissent. It should be a little bit easier to get it together with respect to messages like these, and I think it is probably no surprise to everybody in this room which of those messages got reported in the Chinese press.

There are two crucial issues on which the United States' muted position has to change quickly, or else previous efforts are undermined. It was just a little over a year ago that the Congress and the President awarded the Dalai Lama the Congressional Medal of Honor. Since the protests in Tibet in March and as the dialogue between Beijing and the Dalai Lama has faltered over the last couple of months, this administration has been virtually silent. That is unforgivable, particularly for an administration that wants to claim the Sino-Tibetan dialogue as part of its successful legacy. If they

do not speak now before they leave this office, it really creates problems for moving things forward.

The next issue really is about a story this week, this incredible group of about 300 Chinese scholars, activists, mechanics—it is an incredibly diverse group—have put out a document called “Charter 08,” which is modeled on “Charter 77.” This is an incredibly courageous thing to do, particularly heading into the year in which we will be observing the 20th anniversary of Tiananmen.

I have to compliment the State Department here for managing to get a statement out. That is a step very much in the right direction, but the reality is that Ambassador Randt needs to go out and say this in public in Beijing now.

Liu Xiaobo, who is a very well-known dissident, has not been heard from in several days. He was arrested in connection with the publication of the charter. This is a man who has been welcomed at the U.S. Embassy in Beijing. You cannot have him be your friend when it suits you to do so and then fail to defend him when the going gets tough. That is not acceptable, and we will be watching the Obama Administration very carefully to see that it does a better job, particularly with respect to individuals like this.

Last, but not least, it is important to take on the Chinese Government in the venues that matter the most to them. At the top of this list is the Strategic and Economic Dialogue [SED]. This is the dialogue they like as opposed to the human rights dialogue, which they hate and filibuster and really have not accomplished a great deal. There is no reason that trade discussions cannot talk about things like product safety, which at the end of the day is as much about a free press in China as it is about anything else. There is no reason that security debates should not look at the role of U.S. companies, U.S. technology companies selling surveillance gear that gets used by the Public Security Bureau in China to keep people from criticizing the government.

Lest people think that there is no connection between human rights and security issues, I just wanted to quote a little bit of—not nearly as good as it ought to have been, the statement from the President-elect’s office on the occasion of Human Rights Day, which, nevertheless, at least makes a very explicit connection between these things. He said, “By promoting human rights, the United States will strengthen our security and well-being.” That alone ought to be enough for the SED to take on these issues.

Another venue that the Chinese care a lot about and virtually nobody in Washington is really paying much attention to is the upcoming Universal Periodic Review [UPR] of China. This takes place on February 9 in Geneva. It is two weeks after the inauguration. This is the new mechanism at the Human Rights Council where all member states are going to get reviewed. But for China, it really is different. This is a venue where they never wanted to be reviewed, where they resisted mightily, and, in fact, their resistance contributed a great deal to the old Commission collapsing. And so I think the United States engaging to make sure that China’s review is vigorous, the United States has to show up with good questions, with good recommendations, and not just let it slide, because if the Chinese Government just gets to have its allies filibuster through that process and it cannot be made a rigorous review, it

really calls into question whether UPR is going to work for anyone at all.

I think last, but not least, I have to put in a pitch for the United States visibly demonstrating more support for human rights issues in China by increasing the number of people at the embassy and consulates who work on human rights issues. The number of those people relative to the number of people who work on sort of purely political or trade issues, it is a pathetic imbalance. It is pathetic, and that really has to be rectified.

China is obviously one of the most difficult governments for the United States or for any other government to deal with on rights issues. But I think the consequences of failing to do better in the future are not pretty ones. It leaves us with more product safety debacles. It leaves us with more frustrated attempts at multilateral diplomacy. And worst of all, it leaves us with more people who are in circumstances like Liu Xiaobo is right now, people who have gone out, done what we want them to do, been courageous, and we do not know what has happened to them. We cannot keep letting that happen.

So I will stop there. Thanks.

Ms. OLDHAM-MOORE. Thank you, Sophie.

Phyllis Chang? And right after Phyllis, we will go right to Q&A.

**STATEMENT OF PHYLLIS CHANG, EXECUTIVE DIRECTOR,
CHINA LAW AND DEVELOPMENT CONSULTANTS, LTD.**

Ms. CHANG. Good morning, and excuse my 85-degree angle to the audience. That is probably how I sit in China anyhow, so it is apt. Thank you very much to the Commission for inviting me. I am an interloper. I just happened to be in the other capital, this capital, during these few days, and Professor Randle Edwards very generously offered to donate a few of his minutes. But considering his assignment was to review 30 years of legal reform in 10 minutes, I felt very bad about taking his time. So if you will permit me perhaps at the most 10 minutes to share with you as I am interloping, I have to say some scattered thoughts because there is so much that we can talk about together. But because of time limits and the scope of today's discussion, I am going to deliberately jump a bit.

Doug, when you introduced me, I was afraid you were going to say that perhaps many of you have crossed—rather than saying “crossed paths with Phyllis”—have tripped across me somewhere in Beijing. I have been in China for many years. I am Chinese American, have been working on law reform, rights, government's work, women's issues in China for more than 14 years, and so perhaps a number of you have tripped across me. I often feel like I am the tortoise plodding forward, sometimes sideways, in China.

But that is not a terribly inept metaphor for the construction of the rule of law and progress toward human rights in China. And I do not mean it in a negative way.

From the perspective of many foreigners, including many of those in the room, perhaps the situation with regard to human rights and development of the rule of law has been far from ideal, even very slow, halting. But from the perspective of many Chinese, including many of those who are engaged at the very forefront of efforts to push for more rights and justice and legal system develop-

ment, while the pace of reform and change is, particularly recently, not nearly as fast nor the conditions as encouraging as perhaps 4 or 5 years ago, relatively speaking, except for the very most critical Chinese—and, again, I am talking about those who are engaged in legal reform, governance reform work—almost all will say to you that compared to 15, 20 years, 15 years ago, even 10 years ago, that there has been tremendous progress. And most of them are cautiously optimistic.

Because of time limits, I am not going to say more about that, but my point is that in thinking about—whether we are thinking about diplomacy or at the programming level how to engage with Chinese, how to help Chinese who are reform-minded—and by Chinese, I mean both officials as well as Chinese society, individuals, organizations, businesses, NGOs—we should always try to keep in mind what is the view from the Chinese perspective, again, at these various levels. When I say Chinese perspective, we should not conflate all of China or different types of strata of China into one. But I think it would be very helpful to think what is the Chinese perspective, how do Chinese feel about human rights in China, various types of Chinese sitting in various points in China. What do they think about the situation with human rights? What do they think would be most productive to do themselves? And then how can we help them do those things? And that is how my small firm tries to help Chinese. We support Chinese efforts through funding from various foreign private and government sources. That is the note I would like to sound.

Also, as we think about this theme or follow this note, we will be able to tap in and reinforce impulses in China, change that is already happening. Lorne discussed the growing call for justice, and I think we all agree on that. But I would say in addition to not just the growing expectations, too, for justice, it is not just justice at the individual level, that is, justice in the case of an individual complaint or grievance, but also, I think, very notably what we have seen emerge is now attention to social justice, that is, fairness, a fair shake, or redistribution of—I know that sometimes here in Washington is the wrong word; I may be called a Marxist, but redistribution of resources or fair allocation or at least a voice in the allocation of governmental and social resources. And I think that is very striking and very important because Chinese who are situated in different points in China are showing empathy for and real concern about Chinese who are in other positions and locations and situations in China. And not only that, a second very important impulse and development that is happening in China is that more and more Chinese feel empowered—another overused term, but I really think apt here—empowered to try to make some efforts, whether to help others redress a grievance or to improve their own situation or to influence policy or to bring to light problems in Chinese society or in Chinese Government. They feel that—they may not say it themselves, “empowered,” use that term, but they actually believe that they may be able—they can take some action and maybe even just organizing a small meeting with local residents in the neighborhood association to discuss how to put pressure on a property developer that they feel has reneged on its promise. It may be to compile some statistics about pollution in a

local river and to try to find a sympathetic reporter to release those statistics. But that is very different from 10 years ago in China, the sense that even our efforts, beginning at grassroots levels, can make a difference, and then realizing that there are many different paths now to try to influence change in China.

So those are the kind of impulses and changes and dynamics in China that I think many of you are very knowledgeable about. I am just saying it is a reminder that we should continue to think creatively, be attuned to those things, and then try to tap into them and reinforce the Chinese efforts that are already taking place in China.

In the remaining minutes, I would like to speak, again in an even more scattered way, about the kind of approaches and issues that would be, I think, productive to continue engaging in as well as to begin engaging in. And this is both—my comments address both governmental efforts, not just U.S. governmental efforts, but also ones from the European Union, Australia, other countries, Japan, but also private efforts—private efforts primarily, of course, of foundations but also even businesses and NGOs.

First of all, in the United States the approach has been from the Government side largely decentralized. Time does not allow me to and this is not the venue for a discussion of that, but the idea is to give funding and other resources to make it available on a competitive basis to a number of different American organizations. I personally think that is extremely effective, very powerful.

One of the strengths of the United States is great knowledge, relatively speaking, of China. A large number of Americans from all spheres of life, not just lawyers, the law-trained people, who can speak Chinese, have spent time in China, have many Chinese friends, have a real passion and care for China and Chinese who respect and have worked with them. I think that is a tremendous asset, and so a decentralized approach allowing—giving resources, funding but not just funding, to these kind of organizations and individuals in the United States is tremendous.

At the same time, it may be also worth putting more effort now, with a new administration coming in, not to at all diminish the decentralized approach—by that I mean reduce—but at the same time ramping up perhaps some bilateral work and program in this area. And the interaction between the two, a decentralized approach and a bilateral, more centralized approach, is quite delicate, actually. So I will not discuss that today, but I think that there is room and need to increase a bilateral approach as well in the rule of law and human rights area.

Some of the new issues—well, another thing about approaches is that—I am afraid I will run out of time, and I am about to run out of time—the very simple message is—and it seems so obvious. It is obvious. Let's help to get more Chinese to the United States, to spend time here, the longer the better, because the United States has many serious problems, all societies do, but it also has many strengths. Many of the values and approaches in the United States I think a great number of Chinese deeply appreciate. They need to come here and be able to experience them first as students, visiting scholars, visiting officials, even a study tour, but then to be able to stay under different types of programs and exchanges, to go see

how a legislative hearing in Ashburn—excuse me, an administrative hearing in Ashburn, Virginia, is held about a zoning regulation, to go to a homeowners' association and hear people forcibly but politely debating which property management company they should hire, and then respecting the decision of the majority even though they are not really happy with that; to see how legal education is taught in the United States and experience that themselves. These kind of interactions and experiences are critical.

And although it is so obvious, and time does not permit me to go into the various methods, we have a whole array of possibilities from fellowships for NGO leaders and activists to I think more work should be done on women's issues. Susan O'Sullivan helped to pioneer this. Recently there has not been much work in the area of women's issues, much support for that, at least coming from the United States' end, but women's issues are a tremendous way into human rights. It is obviously part of human rights, working more comprehensively and creatively to integrate what we think of here in the United States, I think too narrowly, with all due respect to my colleagues who have done such important work in this area, I think probably too narrowly—

Ms. OLDHAM-MOORE. Phyllis, could I interrupt you for one second? Would it be possible for you to stay after the briefing to speak with those who want to kind of dig into the details further? Because I think the issues you are raising are extremely important.

Ms. CHANG. Thank you. That is a very good reminder. I have way run over my time.

Ms. OLDHAM-MOORE. No, but is that an option for you, to stay at 12 o'clock here?

Ms. CHANG. I am happy to do that.

Ms. OLDHAM-MOORE. Afterward at 12 o'clock, if you want to drill more deeply into methodologies for rule of law programs in China, please come to this table. Phyllis Chang will be here.

Ms. CHANG. For a while, at least.

Ms. OLDHAM-MOORE. For a while. Thank you very much.

Ms. CHANG. No, no. That—

Ms. OLDHAM-MOORE. Okay, great. So now we are going to go quickly to our question and answer session.

[Inaudible question off microphone.]

Ms. OLDHAM-MOORE. Okay, thank you.

Randy or Sophie, please.

Mr. SCHRIVER. Thank you for the question. I think it is extremely difficult but it is very worthy and deserving work. I think, you know, nobody wants to stick their head up first, and it requires, I think, selecting the right kind of issues and the right kind of assurances that all will stand together or you hang alone, because the Chinese are quite good at picking off the sort of weak link and then really applying severe pressure and consequences.

But I think, again, understanding in a sophisticated way the internal dynamics in China, selecting the right kinds of issues, and then going in, in a way that is forceful, persuasive, but also respectful, I think you can bring other countries along.

I think maybe in some of the global health and environmental areas where there are second-order effects into the human rights realm might be a way that our colleagues from the countries you

mentioned would be more comfortable with initially. But nothing breeds success like success. I mean, if you start with those issues, you could certainly move on to others.

Ms. RICHARDSON. Yes, it is incredibly tough to do, for all of the reasons that Randy has just listed.

We would like to see even just the establishment, for example, of slightly more visible working groups among the embassies in Beijing or even the embassies here. But it is absolutely true that even if you have a common concern it's tough to get common action, even though in the long run that's more effective. We have had this experience before—person X gets arrested, and every single one of those embassies has individually demarched the Chinese Government, it is very difficult to get them to do so collectively, let alone to get them to do it collectively and publicly. But it packs quite a punch when it actually does happen.

We have had a little bit more success in some of these instances when we have enlisted former members of parliament or government who are not necessarily themselves currently in power, but at least it conveys a sense that there are groups or constituencies inside those countries who recognize that people in other countries have the same concerns.

Ms. OLDHAM-MOORE. Thank you.

Lorne, you wanted to make a brief remark?

Mr. CRANER. Yes. I actually do not think it is that hard because we, at least on the human rights dialogue level, started doing it. One of the reasons we were able to bring—I think it was 14 or 15 countries that had human rights dialogues with China in the “Berne process.” There was high-level interest in the U.S. Government, President Bush and Secretary, at the time, Colin Powell had an interest in this. So I was able to pursue it with other countries.

Obviously, when you are working with other countries, you have to have respect for what they want to talk about. When I was talking to the Europeans, for example, the United States raising the death penalty probably does not make a whole lot of sense. The Europeans raising religious freedom gets them into some hot water. But if you focus on the overlap that you have, it can easily be done.

You know, again, in the first term, we were able to do it at that level, at my level, on the human rights dialogues. But it was very effective when a number of countries or the United States and the European Union were asking for the very same thing, and we used to coordinate on what we were asking for. The Chinese did not like it, so they started threatening some of the members. In fact, I think it is no longer allowed to be in Berne, this meeting. I think it has moved to elsewhere. But it does continue and, yes, it is very—it can be very effective.

Would it be better if it was raised to higher levels? Absolutely. And that is something I think the Obama Administration would probably be good at.

If I can just take one second, I mentioned before the support that I had. Some of my predecessors did not have that support, and you can argue, you know, about my successors. But in China, it was very good for me to be the third person in the room talking about these issues after the President and after the Secretary of State. If I was the first person in the room talking about these issues, I

was an Assistant Secretary, they could just blow me off. But being the third person in the room, we were getting down to brass tacks, not arguments about whether it mattered or not. They knew it mattered because the President had raised it and then the Secretary of State, and if he was not there, Mr. Armitage had raised it already with them. And I got a great deal of help from them. That was extremely important.

Ms. OLDHAM-MOORE. Okay, Sophie.

Ms. RICHARDSON. Very quickly, I just want to—a point that Lorne just made about this grouping of countries that does not even meet in Berne anymore. It is true that this group does still get together, but the meetings do not even get announced. We do not know when they are taking place. It is very hard to have any input or get any feedback from them. And I realize that it is partly because the issues are complicated and partly because the countries are, to some extent, trying to protect the individual countries that get threatened.

But, half the point of having those discussions is that the Chinese Government knows they are taking place—right?—and that there is a sense of solidarity. So that the extent to which they sort of sunk lower and lower below the radar screen in our view essentially takes some of the utility out of them.

Ms. OLDHAM-MOORE. Okay. Please, you, sir.

Mr. DAVIS. My name is Joe Davis, and I have a question about your report and one of your recommendations. To some extent this is a question for the Commission, but other people certainly have expertise in this area. This is on page 9 under the Worker Rights section.

Ms. OLDHAM-MOORE. Doug wrote the section. [Laughter.]

Mr. DAVIS. It says “fund multi-year pilot projects and showcase the experience of collective bargaining in action for both Chinese workers and the All-China Federation of Trade Unions [ACFTU] officials.”

Now, in the United States we think about collective bargaining as a negotiation, but both parties have reasonably equal power. I do not think that characterizes the relationship between the ACFTU and businesses or governments in China. And I would like to get some clarification on your perception of really what collective bargaining is in this context. And if I am incorrect about the ACFTU, being really an agency of the Communist Party, if it is, then you cannot use the term “collective bargaining.” “Consultation” or something maybe, but not collective bargaining. And funding this is building the capacity of the ACFTU, which seems to me counterproductive when we know that a democracy needs independent trade unions, and for workers to have a real voice, they have to be able to strike or take some action against their employer without being sent to prison. That is my question.

Ms. OLDHAM-MOORE. Great question. Doug Grob wants to take that one.

Mr. GROB. Okay. Well, thanks very much for that. In response to your point about what is exactly the nature of collective bargaining, I will say that it is not something that you will find today in China. Before I get to your observation concerning page 9 of our Annual Report, I would note that we report on page 42 that “some

prominent labor advocates suggest that, with the new Labor Contract Law now in effect, China's new legislative framework 'is more than sufficient for the development of collective bargaining in China.' The biggest obstacle, they claim, is 'not the lack of legislation but the inability of the official trade union to act as a proper representative trade union.'" And then the Report goes on to say, "The law entrenches the role of the All-China Federation of Trade Unions in contract negotiations. But the Labor Contract Law does not include provisions to guarantee equal bargaining power between workers and employers. The ACFTU is China's only legal trade union, and it is required by the Trade Union Law to 'uphold the leadership of the Communist Party.' The vast majority of 'trade unions' in enterprises effectively remain under the de facto control of management."

Our banner conclusion is right at the top of page 41, that "Workers in China still are not guaranteed either in law or in practice full worker rights in accordance with international standards. China's laws, regulations, and governing practices continue to deny workers fundamental rights, including, but not limited to, the right to organize into independent unions."

Onto the specific recommendation that you pointed to, "prioritize programs that demonstrate the ability to conduct collective bargaining pilot projects even in factories that do not have an official union presence." There have been, within the last few months, collective bargaining pilot projects, meaning projects aimed at someday producing an outcome that we may legitimately say is approaching true collective bargaining. I appreciate the comment and thank you for it because obviously we did not make the point clearly enough that these are projects that have true collective bargaining as an aspiration and a goal, but that do not assume it to be something that currently exists in China. There is a fair glimmer of hope, among a select small number of NGOs operating on the ground there. We put at the end of that sentence that the priority should be on programs that are located in "even factories that do not have an official union presence." The logic there is that those factories are where there would be the greatest potential to produce and foster the development of the idea that there can be labor organizing and trade unions independent of the ACFTU. So to focus on the locations where the ACFTU presence does not pre-exist, is basically a way to stay ahead of the pack. That is the idea there.

I hope that answers your question. I appreciate it.

Ms. OLDHAM-MOORE. Thank you.

Any other questions? Yes, please, you in the purple dress. Thanks.

Ms. KEMPTON. My name is Nicole Kempton. I am the Director of the newly opened Laogai Museum. We are just down the street so everyone I think would enjoy a visit, and I encourage you to come around and have a conversation with us.

I want to ask a big-picture question. During the mid-1990s, around the time of the [inaudible] MFN status for China, we hear the start of the phrase, or I should say mantra, that economic growth will improve human rights in China. You know, it has been over a decade now since that mantra kind of came into existence,

and I just wanted to sort of ask a general question to the panelists. You know, in light of the fact that that phrase has kind of been bankrupted, particularly over the last couple of days with the arrest of Liu Xiaobo and [inaudible] Charter 08, how can we in this time of Presidential transition move beyond that mantra into something more meaningful, more useful, and something which encourages a dialogue on human rights between our two countries?

Ms. OLDHAM-MOORE. Okay. Thank you. Who would like to take that? Anybody? Phyllis, please.

Ms. CHANG. I will just say two sentences. I am sorry, I would strongly disagree with your conclusion that economic growth has not propelled—I would say economic growth has propelled the emergence of stronger rights in China and the development of the rule of law, and I will be here after 12 o'clock. We can talk more about that. But please try to believe that. Economic growth does not mean a delivery of democracy or the kind of rights that we or European citizens or others in other societies may enjoy. But there has been tremendous—it has opened up resources, not just space but resources. You need facilities, you need money, you need communications, you need media to influence other people, other Chinese, from officials to other peers. And that all happens with economic growth, too.

Ms. OLDHAM-MOORE. Great. One last question? Yes, please.

Ms. TUCKER. Hi, my name is Anna Tucker. I am from the China Office of the U.S. Chamber of Commerce. I just wanted to enter the term “stability” back into the discussion [inaudible]. The Chinese Government [inaudible] social stability [inaudible]. I wonder what would be involved in that and how the United States should handle that [inaudible].

Mr. CRANER. The link between social stability and human rights?

Ms. TUCKER. Yes.

Ms. OLDHAM-MOORE. Do you understand the question?

Mr. CRANER. Not really.

Ms. OLDHAM-MOORE. Can you flesh that out?

Mr. CRANER. Tell me a little more.

Ms. TUCKER. Well, the Chinese Government [inaudible].

Ms. OLDHAM-MOORE. Okay. We got it, we got it.

Mr. CRANER. Yes. You know, unlike—and this kind of goes to your question. Unlike some other countries in the world that have undertaken economic liberalization, say Vietnam or—we will leave it at Vietnam—the Chinese Government has also made along the way certain decisions about what did the economic liberalization mean, what corollaries were necessary. And they have been very gently over the years, and in a very incremental fashion, been providing some of those. And, you know, we all know the list, from rule of law to village elections, et cetera.

I think the question, especially at this point, is what expectations about more freedoms has that created among the Chinese people and, again, the sense of justice that I was talking about, and Phyllis was talking about the sense of social justice, and is the system capable of delivering—in other words, the Chinese people have been provided with certain incremental changes from the top down. Now from the bottom up they are asking for more, and the ques-

tion is: Is the system capable of delivering on that as presently configured?

But I think we are kind of moving into a different stage from things being provided to things being asked for, and it is going to be interesting to watch the next few years how that turns out.

Does that mean that economic liberalization caused democratization? Obviously not yet in China, and we do not know the end of the story. I never liked this theory, you know, get a middle class—or get an economy, get a middle class, get a democracy. I always called it the 50-year, 60-year plan.

I think the question for the United States is in this case what can we do to catalyze that. And I think we are going to see a lot of opportunities the next few years.

Ms. OLDHAM-MOORE. Thank you.

Randy Schriver, and then Sophie, and then we will stop for today.

Mr. SCHRIVER. I think actually the last two questions together kind of raises a question about what narrative are you buying into. There is a Chinese narrative—largely Chinese, but embraced by some in the United States—of look at where we have come from. The progress has actually been extremely rapid and the change has been so dramatic when you consider the end of the Cultural Revolution in the mid-1970s and the reforms only starting in 1978, so we are only looking at a 30-year period.

There is another narrative of incremental change, the so-called iceberg; you know, if you sustain your gaze on the iceberg, you cannot see it move; but if you look away for some period of time and look back, you will notice that it moved, and that is kind of the incremental change.

And then there is a narrative of do not be deceived, you know, this is much worse than it suggests, but—I do not know why I am going into this detail, but my narrative has always been it is sort of the performer with the spinning plates. And every once in a while a plate gets wobbly, and they have either got to—they have a decision of letting it fall and break or try to somehow keep the plate spinning. And I have never really seen the Chinese as fundamentally against reform or against the improvement of certain human rights or the quality of life. And I think they are being presented right now with some very interesting choices, and your question, human rights or freedoms being introduced as a negative influence on social and political stability.

Well, look at the situation with the media right now. What they are finding in the era of advanced technology is that a controlled state media is actually working to their detriment when it comes to rumor control and gossip because nobody trusts the official media. So you get the most outrageous rumors starting, you know, sometimes involving Western companies, sometimes—and, you know, people are going to believe their text message and their blog before they believe the state press. So is this an opportunity to push for more press freedoms? Because I think it is.

I mean, that is how I conceive of these things, and it is not so clear either/or, and I do not think the Chinese look at it that way either.

Ms. RICHARDSON. Just two quick points. One, on the term “stability,” it is one that we will certainly be working hard to make sure that nobody in the Obama Administration dignifies, because, frankly, it is such an elastic term that it really could be meant to mean anything. I am sure somebody is telling Liu Xiaobo right now that he has posed a threat to stability and, therefore, he has to be sentenced for at least three and a half years.

But, also, I did want to respond a little bit on the point about economic development and the rule of law, because I think the reality is that had it not been for reform and opening up, you would not have seen the initial steps toward modernizing and improving the legal system that in turn created the space for essentially what we think of as one of the most promising developments for China in the future, and that is the group referred to as the “*wei quan* lawyers,” people who are trying to work essentially within the constitutional framework to improve access to justice, which is probably the most sort of rampant human rights problem across the country.

I urge everyone to read Professor Jerry Cohen’s piece in the new issue of the Far Eastern Economic Review. He makes a great point that Chinese courts are infinitely better equipped and willing to hear huge numbers of cases at sort of a garden variety level, but that until much more controversial cases can be heard on an equal basis, there is still quite a long way to go.

Ms. OLDHAM-MOORE. Thank you, Sophie, and I want to thank everybody on this panel. It has been an illuminating and interesting discussion.

I want to make three quick announcements. Please pick up a copy of our report. Go to our Web site where there are daily updates. We are going to try to expedite the production of this transcript of this proceeding. If you are on our list, you will be notified when it is released. [Applause.]

[Whereupon, at 12:01 p.m., the roundtable was adjourned.]